

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.298 OF 2005**

Mohammed Azhar Mohammed Gause

...Appellant

Vs.

Pune Cantonment Board

...Respondent

Mr.G.S.Godbole i/b Mr.Nitin Gangal for the Appellant

Mr.Presswala i/b Mulla & Mulla for the Respondents.

**CORAM: A.S.OKA, J.
DATED: APRIL 11,2005.**

P.C.:

1. Heard learned Counsel for the parties. The Appeal is by the original Plaintiff. A suit is filed by the Appellant-Plaintiff for injunction restraining the Respondent from interfering, disturbing or obstructing the possession of the Appellant-Plaintiff over the suit premises which is an Art Gallery having an area of 650 sq.ft. (approximately) situated at 35, M.G.Road, Pune. The Trial Court dismissed the suit filed by the Appellant by Judgment and Decree dated 29th October 2004. An Appeal was preferred by the Appellant before the District Court for challenging the Judgment and Decree of the Trial Court. In the Appeal, application for temporary injunction was made by the Appellant-Plaintiff for protecting his possession. The said application for temporary injunction has been rejected by the Appellate Court. It is the said order of the Appellate Court which is impugned in this Appeal from Order.

2. When this Appeal was heard on 1st March 2005, my

attention was invited to the Judgment and Order dated 8th July 2004 passed by the District Court in Misc.Civil Appeal No.214 of 2004 preferred by the Appellant-Plaintiff. The said Appeal was preferred by the Appellant-Plaintiff for challenging the Judgment and Order dated 28th June 2004 passed in the suit filed by him by which application for temporary injunction made by the Appellant was rejected. While partly allowing the Appeal, the District court granted injunction restraining the Respondent from causing obstruction to the possession of the Appellant-Plaintiff over the suit premises subject to the Appellant depositing a sum of Rs.2500/- per day in the Court from 14th June 2004 till the decision of the suit. On 1st March 2005 a statement was made on behalf of the Appellant that there is a compliance with the said order passed by the District Court till the date of disposal of the Suit. The said statement was disputed by the learned Counsel for the Respondent and it was contended that no compliance has been made by the Appellant-Plaintiff. Therefore, this Court directed the Appellant to deposit a sum of Rs.1,00,000/- in this Court on before 14th March 2005. The learned Counsel for the Appellant stated that the cheque in the sum of Rs.1,00,000/- deposited with this Court has been encashed. However, the learned Counsel for the Respondent stated that when enquiry was made in the office, it is revealed that the said cheque has not been encashed.

3. The Appellant-Plaintiff was granted interim relief pending final disposal of the suit subject to the condition of depositing Rs.2,500/- per day. Now, the suit filed by the Appellant has been dismissed and the Appeal is pending in the District Court. Therefore, without prejudice to the other contentions raised by the Respondent, if the possession of the Appellant is to be protected, the order passed by the District court in Misc.Civil Application No.214 of 2004 directing the Appellant to pay a sum of Rs.2,500/- per day will have to be complied with by the Appellant. Even assuming that at the time of preferring this Appeal the Appellant had paid a sum of Rs.2,500/- per day till 29th October 2004 and even assuming that the cheque deposited in the sum of Rs.1,00,000/- is encashed, it will not cover the amount due and payable from December 2004. When a query was made by this Court to the learned Counsel for the Appellant whether the Appellant is ready and willing to pay a sum of Rs.2,500/- per day upto date and whether he is willing to pay the said amount regularly till the disposal of the Appeal, the Counsel is unable to make any such statement on account of want of instructions.

4. This Appeal from Order was adjourned at least on 2 occasions to enable the Appellant to pay a further amount over and above the sum of Rs.1,00,000/- which was ordered to be paid by order dated 1st March 2005. However, no further amount has been admittedly paid by the Appellant-Plaintiff.

5. The Appellant-Plaintiff was protected by interim order during the pendency of the suit subject to depositing a sum of Rs.2,500/- per day. After the suit of the Appellant has been dismissed, if the Appellant-Plaintiff desires to obtain any equitable relief, apart from the other conditions the Appellant must comply with the requirement of depositing a sum of Rs.2,500/- per day. Even going by the calculations submitted by the learned Counsel for the Appellant for a period of last more than three months, the Appellant has not paid the said amount. Today also the Appellant has not come out with the case that he is ready and willing to pay the said amount. In view of this conduct, the Appellant is not entitled to any discretionary relief.

6. The Appellate Court while rejecting the application for temporary injunction has given the reasons for refusing to grant the equitable relief of temporary injunction. Considering all these aspects, no case is made out for interference. Appeal is dismissed with no order as to costs.

7. All the contentions of the parties on merits of pending Appeal are kept open.

8. Parties to act upon an authenticated copy of this order.

Judge.